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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 RONALD KEMONI PETERSON,

12 Plaintiff,

13 v.

14 CHAD BOWEN, et al.,

15 Defendants.  
16

No. 2:22-CV-0510-DJC-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to  
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's second amended complaint. See ECF  
19 No. 25.

20 The Court is required to screen complaints brought by prisoners seeking relief  
21 against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C.  
22 § 1915A(a). This provision also applies if the plaintiff was incarcerated at the time the action was  
23 initiated even if the litigant was subsequently released from custody. See Olivas v. Nevada ex rel.  
24 Dep't of Corr., 856 F.3d 1281, 1282 (9th Cir. 2017). The Court must dismiss a complaint or  
25 portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can  
26 be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See  
27 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that  
28 complaints contain a “. . . short and plain statement of the claim showing that the pleader is

entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff’s claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because Plaintiff must allege with at least some degree of particularity overt acts by specific defendants which support the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is impossible for the Court to conduct the screening required by law when the allegations are vague and conclusory.

## I. BACKGROUND

### A. Procedural History

Plaintiff initiated this action with a pro se complaint filed on March 18, 2022. See ECF No. 1. On June 28, 2022, the Court addressed the sufficiency of Plaintiff’s complaint and concluded that Plaintiff failed to state any cognizable claims. See ECF No. 13. Plaintiff was provided leave to amend. See id. Plaintiff filed his first amended complaint on August 1, 2022. See ECF No. 15. Subsequently, the Court issued findings and recommendations that the action be dismissed for failure to state a claim. See ECF No. 20. Plaintiff filed objections. See ECF No. 21.

On March 8, 2024, the District Judge adopted the findings and recommendations substantively, but rather than dismissing the action the District Judge afforded Plaintiff one additional opportunity to amend. See ECF No. 22. Specifically, the District Judge noted allegations contained within Plaintiff’s objections which, if included in an amended complaint, could support a due process violation. See id. at 2. The District Judge dismissed the first amended complaint and directed Plaintiff to file a second amended complaint within 30 days. See id. The District Judge stated:

. . .Plaintiff’s objections contain allegations concerning re-hearings of Plaintiff’s initial disciplinary hearing which were not included in Plaintiff’s First Amended Complaint. It is possible that these allegations could support a due process claim.

Therefore, Plaintiff will be granted an opportunity to amend his First Amended Complaint in order to fully incorporate his allegations concerning these re-hearings, as well as to address any other pleading deficiencies noted in the Magistrate Judge's Findings and Recommendations. Plaintiff is advised that failure to address these pleading deficiencies may result in dismissal of his action without leave to amend.

ECF No. 22, pg. 2.

Plaintiff timely filed his second amended complaint on April 22, 2024. See ECF No. 25.

**B. Plaintiff's Allegations**

Plaintiff names the following as defendants in the second amended complaint: (1) D.E. Cueva, Warden of the California Medical Facility (CMF); (2) Chad Bowen, a Correctional Officer at CMF; (3) Fletcher, a Correctional Officer at CMF; and (4) Nedelcu, a Correctional Officer at CMF.<sup>1</sup> See ECF No. 25, pg. 2. Plaintiff generally alleges due process violations in the context of a disciplinary hearing.

In his first claim, Plaintiff alleges that Defendant Bowen conducted a search of Plaintiff's cell where Bowen found an inmate-manufactured weapon. See id. at 3. The weapon was found in the chase of the vent in Plaintiff's cell. See id. According to Plaintiff, when the weapon was confiscated, Defendant Bowen took a photograph of the contraband, which Plaintiff states shows that it would have been impossible for the weapon to be put through the vent. See id. Plaintiff alleges, without further factual assertions, that this was a "set-up crime." Id. at 4.

In his second claim, Plaintiff alleges that he was denied a fair hearing on a rules violation report (RVR) issued against Plaintiff based on possession of contraband. See id. at 5. Plaintiff states that, after issuance of the RVR, he was placed in administrative segregation, which made it impossible for him to conduct any investigation prior to the RVR disciplinary hearing. See id. Plaintiff states that, because of this, he was assigned an investigative employee. See id. Plaintiff claims that the assigned investigative employee failed to take photographs of the vent

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<sup>1</sup> These are the same four defendants as were named in the first amended complaint. M. Osuna, D. Footman, Orman, and Bettis, who were named as defendants in the original complaint and who are listed on the docket, are no longer named in the second amended complaint.

1 which would have shown that the opening was too narrow for Plaintiff to have concealed a  
2 weapon in the vent. See id. Plaintiff states that he was found guilty of the RVR. See id.  
3 Plaintiff does not name the assigned investigative employee or describe the punishment he  
4 received.

5 In his third claim, Plaintiff alleges that evidence used against him at the RVR  
6 hearing was “tainted.” Id. at 7. Plaintiff alleges that Lieutenant Footman – who is no longer  
7 named as a defendant to this action – told Plaintiff that “c/o Bowens naver [sic] have been  
8 accused of framing inmates.” Id. Plaintiff further alleges that Footman was present when  
9 Defendant Bowens found the weapon in Plaintiff’s cell. See id.

10 Attached to Plaintiff’s second amended complaint are documents indicating that  
11 the original RVR had been reissued because the “IE [investigative employee] failed to interview  
12 all witnesses for a fair hearing. . . .” Id. at 16. These documents also indicate that a second RVR  
13 hearing was held at which time Plaintiff was permitted to ask questions of various witnesses,  
14 including inmate witnesses. See id. at 17-21.

15 For relief, Plaintiff asks that the RVR be “removed.” Id. at 9.

## 17 II. DISCUSSION

18 With respect to prison disciplinary proceedings, due process requires prison  
19 officials to provide the inmate with: (1) a written statement at least 24 hours before the  
20 disciplinary hearing that includes the charges, a description of the evidence against the inmate,  
21 and an explanation for the disciplinary action taken; (2) an opportunity to present documentary  
22 evidence and call witnesses, unless calling witnesses would interfere with institutional security;  
23 and (3) legal assistance where the charges are complex or the inmate is illiterate. See Wolff, 418  
24 U.S. at 563-70. Due process is satisfied where these minimum requirements have been met, see  
25 Walker v. Sumner, 14 F.3d 1415, 1420 (9th Cir. 1994), and where there is “some evidence” in the  
26 record as a whole which supports the decision of the hearing officer, see Superintendent v. Hill,  
27 472 U.S. 445, 455 (1985). The “some evidence” standard is not particularly stringent and is  
28 satisfied where “there is any evidence in the record that could support the conclusion reached.”

1 Id. at 455-56. However, a due process claim challenging the loss of good-time credits as a result  
2 of an adverse prison disciplinary finding is not cognizable under § 1983 and must be raised by  
3 way of habeas corpus. See Blueford v. Prunty, 108 F.3d 251, 255 (9th Cir. 1997).

4 Here, the Court finds that Plaintiff continues to fail to plead a cognizable due  
5 process claim. To state such a claim, Plaintiff must allege facts showing that he was denied the  
6 minimal procedural protections outlined above – written notice, an opportunity to present  
7 evidence, assistance when necessary, and some evidence supporting the guilty finding. The  
8 documents Plaintiff attaches to the second amended complaint reflect that Plaintiff was provided  
9 these protections in the context of the second RVR hearing. The attached documents also show  
10 that there was some evidence to support the finding that Plaintiff possessed an inmate-  
11 manufactured weapon.

### 12 13 **III. CONCLUSION**

14 Because it does not appear possible that the deficiencies identified herein can be  
15 cured by amending the complaint, Plaintiff is not entitled to leave to amend prior to dismissal of  
16 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

17 Based on the foregoing, the undersigned recommends that this action be dismissed  
18 for failure to state a claim.

19 These findings and recommendations are submitted to the United States District  
20 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
21 after being served with these findings and recommendations, any party may file written  
22 objections with the court. Responses to objections shall be filed within 14 days after service of  
23 objections. Failure to file objections within the specified time may waive the right to appeal. See  
24 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

25  
26 Dated: May 15, 2024

27   
28 DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE